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Prosecutor and Criminal Court Use of Juvenile Court Records: A National Study

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Overview of the Study

Public concerns about crime focus primarily on violent crime and violent offenders. Increasingly, efforts to combat crime are directed at identifying and incapacitating repeat violent offenders. One indicator of a violent repeat criminal is the offender's juvenile record. Use of this identifier can lead to both priority prosecution and increased court sanctioning.

To answer questions about court use of defendants' juvenile records, the Institute for Law and Justice (ILJ) undertook a two-part study. In Phase I, ILJ reviewed the legal and programmatic status of adult courts' juvenile record use in the 50 states. This entailed a review of legislation in the 50 states and telephone surveys of prosecutors' offices in the largest jurisdictions in each state. ILJ also conducted telephone surveys of state agencies responsible for centralized record holding and dissemination of juvenile court records. Finally, statistics were collected from state sentencing guidelines commissions to determine what proportion of offenders in those states had juvenile disposition records.

In Phase II, ILJ examined the use of juvenile records in serious felony cases by court decisionmakers in two jurisdictions: Wichita, Kansas, and Montgomery County, Maryland. The key features of Phase II were the following:

- Collection of case descriptors, case processing information, and case outcome data, including original charges, charge reductions, pleas, sentences imposed, victim injuries, etc.
- Calculation of how use of juvenile records with sentencing guidelines results in increased use of incarceration and extended terms of incarceration
- Determination of the proportion of serious offenders with adult and juvenile records among all serious offenders

Introduction: The Problem of Violent Crime

Violent crime is widely viewed as a significant national problem. The recent passage of the Violent Crime Control and Law Enforcement Act of 1994¹ is the most recent legislative expression of this concern.

¹ Pub.L. 94-322, 108 Stat. 1796 (September 13, 1994).

One approach to reducing violent crime is based on research showing that a small cadre of offenders is responsible for a disproportionate number of violent crimes. Based on popular interpretations of that research, policymakers are increasingly using it to justify more punitive sentencing policies.

The key to selective incapacitation is, of course, efficiently identifying high-rate offenders. Virtually all efforts to identify offenders for whom selective incapacitation is appropriate do so by using official records of arrest, conviction, and incarceration. For example, Greenwood interviewed over 2,000 inmates in three states (including California) to develop a scoring system using official records for implementing selective incapacitation.² A simple point-scoring system was developed that tended to distinguish between high- and low-rate offenders. The factors used by that scoring scheme include juvenile adjudication history and juvenile drug use.

Relationship of Juvenile to Adult Serious Crime

The relationship between juvenile and adult serious crime is critical to identifying cadre members for whom an incapacitation strategy is appropriate. Several cohort studies show that serious juvenile crimes are correlated with serious adult crimes.³ Elliott's analysis of the longitudinal National Youth Survey of youth aged 11-17 in 1976 has several important findings for understanding the relationship between youth and adult violent crime. One key finding was that 60 percent of adults (age 27) who reported having committed serious violent offenses had committed similar acts before age 18.⁴ The data also show a strong escalation phenomenon: the rate of lesser offenses increases threefold in the three-

² Peter Greenwood and Alan Abrahamse, *Selective Incapacitation* (Santa Monica: RAND, Inc., 1982).

³ See, e.g., Marvin Wolfgang, Peter Figlio and Thorsten Sellin, *Delinquency in a Birth Cohort* (Chicago: University of Chicago Press, 1972); Kimberly Kempf, "Crime Severity and Criminal Career Progression," *Journal of Criminal Law and Criminology*, Vol. 79 (1988), p. 524; Lyle Shannon, *Criminal Career Continuity* (New York: Human Sciences Press, 1988).

⁴ Delbert Elliott, "Serious Violent Offenders: Onset, Developmental Course, and Termination—The American Society of Criminology 1993 Presidential Address," *Criminology*, Vol. 32 (1994), p. 8. At the same time, only 22 percent of adult males who reported having committed serious violent offenses as a minor also reported committing similar offenses as adults, p. 15.

year period preceding the first violent offense; aggravated assault is the most frequent first violent offense; robbery precedes rape.⁵

In addition to cohort studies, other researchers have used a retrospective approach to see if high-repeat offenders had juvenile records. Petersilia's interviews with inmates found that the type of juvenile crime did not predict the type of adult crime, but, rather, showed an escalation phenomenon.⁶ The mid-1980s Chaiken and Chaiken study of defendants in Los Angeles County and Middlesex County, Massachusetts, found that juvenile arrests for robbery and burglary were predictors of career criminal behavior.⁷ In Columbus, Ohio, Hamparian found that adult offenders arrested for violent crimes were likely to have committed violent crimes as juveniles.⁸

Addressing Violent Offenders: Adult Court Use of Juvenile Records

Until recently, the primary rationale for using juvenile records in adult court was to distinguish between adult first offenders with and without juvenile criminal histories. Sentencing decisions were left to judicial discretion. In the past 15 years, sentencing policy in many states has undergone a revolution. Sentencing guidelines and other forms of presumptive sentences now limit judicial sentencing discretion in about half the states. At the same time policymakers have increasingly adopted the research findings supporting the idea of selective incapacitation as a basis for these sentencing law changes. The research studies also suggest that those against whom selective incapacitation should be applied can be identified through official records, including records of juvenile crimes.

Availability of Juvenile Records

A 1985 report by the Bureau of Justice Statistics (BJS) summarized the difficulties in obtaining and using juvenile record information. They include record-keeping failures, such as the absence of any record when charges are “informally adjusted” and charges are not filed; the use of generalized

⁵ Ibid., pp. 11-13. The small sample size (67), however, takes away some degree of generalizability from these later findings, since only 30 percent of youth who reported committing aggravated assaults also reported having committed either a robbery or rape.

⁶ Joan Petersilia, Peter Greenwood, and Marvin Levin, *Criminal Careers of Habitual Felons* (Washington: National Institute of Law Enforcement and Criminal Justice, 1977).

⁷ Marcia Chaiken and Jan Chaiken, *Redefining the Career Criminal: Priority Prosecution of High-Rate Dangerous Offenders* (Washington: National Institute of Justice, 1990).

terminology such as “delinquent”; and post-adjudication diversion that delimits court findings that an offense occurred. Other difficulties are the common practice of purging or sealing juvenile records; administrative “hurdles” that “mean that legally available records are not in fact available”; and the absence of fingerprints needed to link juvenile with adult records.⁹

Use of Juvenile Records

By and large, criminal court actors agree that defendants’ juvenile records are relevant and should be used to inform discretionary decisionmaking.¹⁰ Further, a strong rationale exists for mandating juvenile record use at sentencing, especially where the state sentencing laws are predicated on an incapacitation strategy.

It is an open question, however, whether prosecutors and judges use those records. To the extent they do, questions then arise about the purposes for which the records are used and the effect of such use. Finally, what are the barriers to juvenile record use, and how can those barriers best be overcome?

Phase I

Phase I of the study examined the national status of laws; prosecutor policies, and practices; central record keeping agencies practices; and the incidence of juvenile records among convicted defendants.

Juvenile Record Incidence

An upper limit on juvenile record incidence comes from a BJS survey of prison inmates. That 1991 survey found that about 40 percent of the inmates reported having had juvenile adjudications.¹¹ Half of those offenders had been incarcerated as juveniles.¹² A significant proportion were first-offenders in the adult system: 8 percent had received juvenile adjudication sentences to probation or

⁸ Donna Hamparian, Richard Schuster, Simon Dinitz, and John Conrad, *The Violent Few: A Study of Dangerous Juvenile Offenders* (Lexington, Mass.: Heath and Company, 1978).

⁹ Bureau of Justice Statistics, “Crime Control and Criminal Records,” Special Report (1985), p. 4.

¹⁰ See Uniform Law Commissioners, *Model Juvenile Court Act*, §§ 54(4) and 55(5).

¹¹ Bureau of Justice Statistics, *Survey of State Prison Inmates, 1991* (1993), p. 13.

¹² Bureau of Justice Statistics, *Comparing Federal and State Prison Inmates, 1991* (1994), p. 6.

incarceration, but no prior adult sentence.¹³ Since prison inmates may be sentenced, in part, based on their juvenile records, cohort studies of all offenders may be expected to show somewhat lower rates of record incidence.

The only available multistate source of data about the proportion of offenders with juvenile records is sentencing guideline databases. Virtually every state with sentencing guidelines requires that judicial sentencing reports be filed to monitor compliance with the guidelines and identify problems in their implementation. The five states with computerized databases permitting analysis of juvenile record incidence reported:

- In 1993 in Washington state, 1,450 out of 18,870 (8 percent) convicted defendants were reported as having juvenile adjudication records. The sentencing guidelines, however, include juvenile records in calculating the criminal history score only if the defendant is under age 23 at the time of the commission of the present offense, except for the most serious juvenile offenses, which are included regardless of the defendant's age. In 1993, there were 4,958 defendants under age 23 at the time of their conviction. Of them, 1,430 defendants, or 37 percent, had juvenile adjudication records.
- In Michigan, 11.2 percent of all convicted defendants in 1993 had juvenile adjudication records. Limiting the analysis to defendants under age 32, 16.5 percent of defendants had juvenile adjudication records.
- In Pennsylvania, 6 percent of all convicted defendants in 1993 had juvenile adjudication records. Among defendants convicted of violent offenses or burglary, the proportion with adjudication records nearly doubled, rising to 11.5 percent.
- In Minnesota, 9 percent of all convicted defendants in 1993 had juvenile adjudications.
- In Oregon, 5.4 percent of sentenced defendants in 1993 had juvenile adjudications.

In summary, several data sources show that juvenile record prevalence is significant among serious adult offenders. State variations in record reporting and keeping practices make it difficult to estimate the proportion of offenders with adjudication records. However, among serious offenders (for whom incapacitation sentences are appropriate), the juvenile record incidence may be as high as 35-40 percent.

¹³ *Survey of State Prison Inmates, 1991*, p. 11.

Legislative Review

The ILJ review of state laws included all laws enacted through the 1994 legislative session. In examining laws governing the use of juvenile records (e.g., sentencing guidelines), the review was structured to follow the process by which those records are first created (through arrest fingerprinting), centrally collected, and disseminated.

Review Findings Summary

The legal structure required to facilitate criminal court use of juvenile adjudication records is largely in place. Most states (40) authorize fingerprinting for juvenile records. A majority of states (27) authorize central holding of juvenile adjudication records, although many of those limit that authorization to serious violation records. Almost all states (48) authorize judicial access to juvenile records for sentencing purposes, and nearly half (24 states) authorize prosecutor access. The same number of states specify how judges may use juvenile record information at sentencing.

Fingerprinting of Juvenile Arrestees

The juvenile record begins with police fingerprinting of juveniles either at arrest or at the direction of the juvenile court. Fingerprinting is done to ensure that the juvenile records accurately identify a specific juvenile as the person who was the subject of a juvenile court disposition.¹⁴ Among all the states maintaining juvenile records at the state level, only one state does not base record collection on fingerprint identification.¹⁵

- Forty states' laws explicitly authorize police to fingerprint juveniles they have arrested.¹⁶
- Only two states' laws forbid fingerprinting of juvenile arrestees.

¹⁴ Bureau of Justice Statistics, "Crime Control and Criminal Records," Special Report (1985), p.4.

¹⁵ See "Crime Control and Criminal Records."

¹⁶ The statutory language, "all persons," in the laws of New Hampshire and West Virginia may also be interpreted to include juveniles among those who may be fingerprinted. If that is the case, there are no limits on which juveniles may be fingerprinted that are distinct from the limits on adult arrestees.

Central Holding of Juvenile Records

Authorization to fingerprint juveniles implies that the arresting agency will maintain a fingerprint record file for future reference. The next step is legislation that explicitly authorizes central record holding at the state level:

- Twenty-seven states have enacted laws authorizing establishment of a central record repository to hold juvenile arrest or court disposition records from throughout the state; two other states have laws that refer to central record holding.
- Five states forbid central holding of juvenile records.¹⁷

Only four states' laws authorize establishment of a separate juvenile record center. Two of those states authorize both juvenile and adult record centers to hold the records of serious juvenile offenders.¹⁸

Criminal Court Access to Juvenile Records

Every state provides in some manner for prosecutor or court access to juvenile records of adult defendants at some point in the court process. In 48 states, such authority is explicit. In two states, legislative establishment of a central repository for juvenile records implicitly authorizes prosecutor and court access. Different legislative schemes exist for providing access authority:

- Twenty-four states' laws explicitly provide for prosecutor access.
- In 23 states the central record repository is authorized to collect and disseminate juvenile records. This authority implicitly authorizes prosecutor access to juvenile record information in 13 states where there is no other explicit authority. In only one state, however, is the central record authority the sole statutory basis for judge or probation access to the juvenile record.

In a few states (e.g., Tennessee), the juvenile court records of a subset of serious juvenile offenders are exempted from other laws establishing confidentiality of juvenile records.

¹⁷ Two states, Georgia and Iowa, in 1994 repealed their laws barring central holding of juvenile records. In the absence of any other legislation, repeal of that bar might be taken to signifying legislative intent to approve administrative action to establish juvenile central recordkeeping.

¹⁸ Four other states have enacted laws that authorize central collection and dissemination of juvenile offenders' fingerprints but not juvenile record histories. Those records may be used only for investigative purposes.

State Sentencing Laws

Twenty-four states' laws provide for structured consideration of defendants' juvenile records in the setting of sentences. The most common method of structuring juvenile record use is through inclusion of the juvenile record among the factors used in the state's sentencing guidelines (14 states). Typically, this is done by including the juvenile record in calculating a criminal history score. This score is applied to a sentencing grid that matches criminal history scores with a crime seriousness score based on the crime of conviction. The grid location where the two scores intersect establishes the presumptive sentence to be imposed. Considerable variation exists, however, in how the juvenile record calculation is accomplished and in how that use compares to the uses of adult records:

- In Maryland, a single juvenile disposition does not affect the criminal history score, and for larger numbers of dispositions a maximum of two points (two juvenile commitments) may be added to the total score. Further, only defendants who are younger than 26 will have juvenile record scores considered.
- Only Oregon, among the 10 states authorizing juvenile record use in calculating a criminal history score, counts all juvenile disposition records as equal to adult convictions.¹⁹

In two guidelines states (North Carolina and Wisconsin), the juvenile record is simply an authorized aggravating factor that the judge can use in sentencing to the most severe guideline penalty. Two states with presumptive sentencing laws require judges to use defendants' juvenile records in setting sentences. Presumptive sentencing laws establish a range of sentences to be imposed when a defendant is convicted and sentenced to incarceration; the existence of a juvenile record places the defendant in a higher range of those presumptive sentences. Seven other states (and one with a presumptive law structure) provide for judges to consider a juvenile record as a significant factor in determining whether to impose a sentence of incarceration or probation. Three other states with presumptive sentencing laws fail to include the juvenile record as a relevant factor. In California and Louisiana, defendants' juvenile records are counted towards the "three strikes" and habitual offender laws, respectively.

¹⁹ Under Minnesota law enacted in 1994, dispositions of "extended jurisdiction juveniles," i.e., juveniles who have committed crimes that call for prison sentences under the guidelines, are to be counted as equal to adult crimes.

Trends

From a historical perspective, two distinct trends are evident. First, states are increasingly enacting laws that ease prosecutors' and courts' access to offenders' juvenile records. Other new laws also increasingly dictate that the juvenile records be used in directed ways. In addition, expansion of "legislative waiver" laws reduces the need for prosecutors to seek judicial waiver and makes juvenile record availability less germane. Amendment of both types of waiver laws is the most significant legislative trend in the past few years; 22 states in 1994 adopted laws making it easier to prosecute juveniles in the criminal courts.

State Practices Surveys

Review of State Record Use Practices

A telephone survey of prosecutors' offices in large jurisdictions was conducted in the last quarter of 1994. The jurisdictions surveyed were selected from the universe of cities and counties with populations over 250,000 persons. In states with no local jurisdiction of that size, the largest county was selected. A total of 74 local prosecutors were contacted in all 50 states.

In addition to the practitioner surveys, ILJ also surveyed state-level repositories of juvenile records. These were (1) repositories holding summary records similar to those held by criminal history repositories for adult offenders, and (2) central record repositories maintained by state youth service agencies that include information about juvenile court appearances and dispositions. The survey of central record repositories covered the 50 states' record centers that hold criminal history records.

State Practices Survey of Prosecutors

In only three states do prosecutors report never obtaining juvenile record information. In the remaining states, nearly half (22 states) routinely receive such information. The most common source of record information is the prosecutor's own files. Both central record holding and computerized information systems increase the likelihood that prosecutors routinely obtain juvenile records. Prosecutors in 17 states use the information at case initiation/screening. In 16 states, juvenile record information is used to inform the prosecutors' sentencing recommendations. Prosecutors in far fewer numbers use juvenile records at other key decision points, such as plea negotiations. Overall, the

prosecutors surveyed do not make extensive use of the juvenile record information that is available to them, even where access is not onerous.

Frequency of Record Access/Use

The key research question is whether prosecutors have access to defendants' juvenile records. Only three states' prosecutors report that they never obtain juvenile record information. Those states are Connecticut, Mississippi, and Missouri. In three other states, the prosecutor rarely obtains juvenile record information. Those states are New Hampshire, North Dakota, and Vermont.

In 16 states, the prosecutor occasionally obtains juvenile record information. Those states are

Alabama	New York
Alaska	North Carolina
Colorado	Oregon
Iowa	Tennessee
Maine	Texas
Maryland	Utah
Minnesota	Virginia
New Mexico	West Virginia

Only five of those states have legislation authorizing direct access by prosecutors to juvenile records. Six other states, however, have central record repositories that are authorized to hold and disseminate juvenile records. Two other states have sentencing laws that require consideration of the juvenile record in setting sentence. In toto, 13 of the 16 states where prosecutors have occasional access to juvenile records legislatively permit such access.

In 22 states, prosecutor access to juvenile adjudication records is routine. Those states are

Arizona	Idaho	Nebraska	South Carolina
Arkansas	Indiana	New Jersey	South Dakota
California	Kansas	Nevada	Washington
Delaware	Kentucky	Oklahoma	Wisconsin
Florida	Michigan	Rhode Island	Wyoming
Hawaii	Montana		

Thirteen of these states have legislation that explicitly authorizes prosecutor access to juvenile records. Two other states have sentencing laws that require consideration of the juvenile record at

sentencing. Five other states have central record repositories that collect and disseminate juvenile records.

In six states, prosecutor access to juvenile records varies by county. Those states are Georgia, Illinois, Louisiana, Massachusetts, Ohio, and Pennsylvania.

Source of Record Access

Prosecutor access to juvenile records may be affected by which agency provides the record information to the prosecutor. Prosecutors report different sources for the juvenile record.

Prosecutors in 32 states use office files for record information. In 11 of the 32 states, juvenile information is routinely sought from the prosecutor's office files. In most jurisdictions (18), however, prosecutors ask for juvenile record information in specific cases. In two of those states, the information is rarely sought.

In 21 states, juvenile record information is provided to the prosecutor by the juvenile court. In most states, record access requires a formal request to the court, typically in the form of a subpoena. In 15 of those states, the juvenile court is the primary source of juvenile record information.

In six states, the central record repository routinely provides juvenile record information to the prosecutor. In 12 other states, juvenile record information is provided by local police. In three jurisdictions, prosecutors rely on police reports.

The pre-sentence investigation (PSI) report is provided to the prosecutors in eight states as a routine source of juvenile record information. In three other states, the PSI report is the primary source of occasional record reports.

Sentencing Recommendations

In 16 states, the prosecutor's primary use of juvenile record information is for sentencing recommendations to the court.

Record Limitations

Prosecutors typically seek considerable information about case specifics, beyond the simple listing of arrests and convictions. The Idaho prosecutor was especially concerned about the lack of

case detail information. In Wisconsin, one prosecutor's office reported that it routinely receives juvenile arrest records from the state without court disposition information. Florida prosecutors noted the difficulty of interpreting juvenile history information without case information.

Discussion

Although prosecutor use of juvenile records is not routine in most states, the availability and use of those records has increased significantly over the past decade. Petersilia reported in 1981 that less than half the prosecutors received little or no juvenile record information and that when available such information was local, not statewide.²⁰ In contrast, prosecutors in 1994 in only six states reported receiving little or no juvenile record information. Three factors seem to explain the change: new laws providing for greater ease of access (e.g., central record repositories), improved record keeping (e.g., computerized record systems), and increased utility (new sentencing laws).

State Practices Survey of Central Record Repositories

A telephone survey of the 50 states' central record repositories was conducted in the spring of 1994. Of 50 state central record repositories surveyed, 21 hold juvenile offender records.²¹ Five other states have a central juvenile record repository within the youth services agency. Most states whose record repositories hold juvenile adjudication records limit their holdings to records of offenses that would be felonies if committed by an adult.

Juvenile Record Holding

The 21 states that report that their central record repositories hold juvenile records are the following:

Arkansas	Massachusetts	South Carolina
California	Michigan	Tennessee
Delaware	Minnesota	Virginia
Illinois	New Mexico	Washington
Indiana	New York	West Virginia

²⁰ Joan Petersilia, "Juvenile Record Use in Adult Court Proceedings: A Survey of Prosecutors," *Journal of Criminal Law and Criminology*, Vol. 72 (1981), p. 1746.

²¹ Since this survey was completed, the state of Maryland enacted legislation authorizing central record holding of juvenile adjudications for serious offenses. Officials at the Ohio record repository report that they can accept juvenile records if the juvenile court judge has ordered the offender to be fingerprinted.

Kansas
Maine

Oregon²²
Pennsylvania

Wisconsin
Wyoming

Of the remaining 29 states, one state's central repository holds no juvenile records, one repository holds fingerprint records for identification purposes, and 27 repositories hold the records of juveniles prosecuted as adults. Two states whose repositories hold juvenile records, New Mexico and West Virginia, lack explicit statutory authority for the repositories' juvenile holdings. Conversely, five other states' enabling legislation may permit the central record repository to receive and disseminate juvenile records. They are Alaska, Louisiana, Nebraska, New Jersey, and Utah.

In five of the 29 states whose criminal history repositories do not hold juvenile records, a central record repository for juvenile records exists in the youth services system. In two of the five states, legislative authority exists for the central record repository to hold juvenile records. In a sixth state, Hawaii, the authorized juvenile information system had not yet been implemented because of budget considerations.

Record-Holding Issues

Seventeen of the 21 states where juvenile records are held at the central record repository have automated both the adult and juvenile records. In Kansas, the juvenile records are automated, but the adult records are not automated. In Maine, New Mexico, and West Virginia, neither type of record is automated.

The quality of the juvenile records in most states is not thought to be as good as that of the adult records. Only five states report that the number of law enforcement agencies reporting juvenile arrests to the repository equals the number reporting adult arrests. However, in four states there is no reporting to the repository by the police; only the courts provide juvenile offender information. In New Mexico, only the jail reports juvenile record information. In contrast, nine states report that court disposition information is at least as good as that provided for adult offenders.

²² Note that ILJ's legislative review found that Oregon state law prohibits centralized collection of juvenile records.

Trends in State Actions

Among the 21 states where the central record repository holds juvenile records, seven states enacted authorizing laws since 1990. Only five states' authorizing laws date back to the 1970s

Phase I Summary Assessment

The review of state data about the incidence of juvenile records among offenders found that many defendants have juvenile records. In addition, the review suggests that the incidence of juvenile records increases with crime seriousness. These findings support the study's assumption, based on prior research, that juvenile record use has significant implications for an incapacitation strategy. The review of state legislation and practitioner practices, however, shows only halting steps in most states towards implementing that strategy. At the same time, other state legislation limiting the jurisdiction of the juvenile court (e.g., direct file requirements for juveniles charged with serious offenses) results in a diminution of the utility of the juvenile record for identifying sophisticated, youthful, adult defendants who have not yet had time to acquire an adult record.

Adoption of a sentencing strategy that uses the juvenile record is even more problematic. Only 24 states, a slight minority, mandate judicial use of defendants' juvenile records by defining their significance for sentencing.

Only two states have taken a direct route to use of the juvenile record in sentencing defendants in accordance with an incapacitation strategy. In California, the state's "three strikes" law counts juvenile adjudications for serious offenses the same as adult felony convictions.²³ In Louisiana, the state's habitual offender law also counts juvenile adjudications as equal to adult convictions.²⁴

Overall, eight states have both (1) a favorable statutory environment and (2) prosecutor interest and structured judicial use of juvenile adjudication records: These are Arkansas, California, Indiana, Kansas, Michigan, Rhode Island, Washington, and Wisconsin. In a ninth state, Hawaii, laws and practices generally support the use of juvenile records, except that statutes there do not explicitly

²³ *California Penal Code* § 667.

²⁴ *Louisiana Revised Statutes* § 15: 529.1.

provide for prosecutor access to those records. However, since the attorney general's office is the statewide prosecutor there, such legislation might well be superfluous.

Phase II

Phase II was a study of how juvenile records of repeat violent offenders are used in adult courts in two jurisdictions. Two sites, one in Kansas and one in Maryland, allow for examination of both the early availability of a juvenile record (state repository states) and of sentencing guidelines.

- The state with the longest experience with juvenile record centers is Kansas, which established a juvenile record repository in 1983 within the Kansas Bureau of Identification (KBI).
- In the absence of any clear difference among other potential sites, factors such as travel costs and ILJ experience with the jurisdiction dominate site selection. Hence, the second study site was Montgomery County, Maryland, which is in one of the states having sentencing guidelines calling for juvenile record information.

The first data collection requirement was to identify cases in which defendants were charged with the relevant crimes defined above. Those cases were identified from all cases referred to the prosecutor with felony charges. To ensure that the sample was large enough for analysis, a full year of cases was identified. In Montgomery County, Maryland, case identification was done retrospectively for all cases filed in 1993. In Wichita, Kansas, case identification was done for all cases filed after the sentencing guideline's implementation date of July 1, 1993, until August 30, 1994. (The one-month extension was due to difficulties in gaining adequate case information in the first month of implementation.)

Wichita, Kansas

Wichita is the seat of Sedgwick County, which has a population of 416,000 persons. The District Court has 26 judges, eight of whom are assigned to hear criminal cases. Prosecution is the responsibility of the district attorney for the 18th Judicial District who has 39 attorneys and five trial investigators and is responsible annually for filing about 2,400 to 2,600 felony and 100 misdemeanor cases.

Sentencing Guidelines

Kansas enacted a sentencing guidelines law that took effect July 1, 1993.²⁵ Under that law, a presumptive sentence is determined according to a sentencing grid based on the crime severity level and the offender's criminal history score. A judge may depart from the guidelines' presumed sentence but must explain in writing why the departure is appropriate, choosing from a list of authorized departure reasons. The judge may also order a prison sentence without a departure where the presumptive sentence is to probation but the defendant committed the crime while on probation or parole. Under the Kansas sentencing guidelines, a defendant's juvenile adjudication record is essentially treated the same as an adult criminal record. However, juvenile adjudications for lesser nonperson offenses "decay" after the defendant reaches age 25.²⁶ Juvenile adjudications for serious offenses do not decay.

Study Findings

The review of cases filed between September 1, 1993, and August 30, 1994, identified 646 cases²⁷ involving 592 defendants. (Forty-eight defendants were prosecuted two or more times in the course of the year.) Those cases resulted in 477 felony convictions, 46 misdemeanor convictions, 25 diversions, and 94 dismissals or not-guilty findings. Four cases remained pending at the close of data collection. Among the 592 defendants arrested, 131 defendants (charged in 147 cases) had juvenile records. Inclusion of the juvenile record in calculating a presumptive sentence under the sentencing guidelines had a significant impact on sentencing in 74 cases, a minimal impact in 52 cases, and no impact in 5 off-grid cases.

²⁵ *Kansas Statutes Annotated* § 21-4701 *et seq.* All felony crimes except capital offenses are covered by the sentencing guidelines.

²⁶ Record decay refers to the exclusion of the juvenile record from guideline calculations, rather than record destruction or sealing. Serious offenses include all person felonies, nonperson offenses at levels 1 through 5, and drug offenses at levels 1 to 3.

²⁷ For purposes of this study, each defendant charged in each criminal cases is counted as a separate case. Under Kansas law, however, a single case number is assigned to all defendants charged in a single prosecution from a criminal event involving two or more offenders.

Case Outcomes

Four hundred seventy-seven prosecutions resulted in a felony conviction. They represent 74 percent of all prosecutions,²⁸ comparing favorably to the national average of 64 percent convictions in all felony cases.²⁹ Crimes with the highest conviction rates were robbery (89 percent) and homicide (86 percent).

In addition to 477 felony convictions, 46 cases resulted in misdemeanor convictions. Those cases involved defendants originally charged primarily with assault, burglary, drug trafficking, and weapons offenses. Another five cases resulted in diversion, which is a probation-like outcome but which does not result in a permanent criminal record. Only 94 cases (15 percent) resulted in case dismissal or a not-guilty jury finding. Four cases were pending at the close of data collection.

Prior Adult Record

The study found that 379 defendants (64 percent) had prior adult criminal convictions. Defendants charged with robbery (75 percent) were most likely to have prior adult convictions. Nearly half (184 or 49 percent) of the 379 defendants with adult prior convictions had five or more convictions. Fifty-seven (15 percent) had 10 or more convictions.³⁰ Not surprisingly, the likelihood of having a criminal record is correlated with age. Approximately half the offenders (142 of 279) under age 25 had prior adult convictions, while 76 percent of the older offenders (237 of 313) had adult convictions.

The study findings for prior record also support the incapacitation hypothesis that a small number of offenders commit a disproportionate amount of serious crime. Thus, of 592 defendants, 100 had two or more violent crime convictions. Those 100 defendants as a group accumulated 315 violent

²⁸ Inclusion of misdemeanor convictions in the calculation of the Wichita conviction rate raises the rate to 81 percent. Using a defendant base to calculate the conviction rate, 84 percent of defendants charged in the 647 serious crime cases were convicted of a felony or misdemeanor offense. This latter statistic (84 percent) takes account of the fact that nearly one-third of the dismissed cases were subsequently refiled and resulted in a conviction.

²⁹ See Pheny Z. Smith, *Felony Defendants in Large Urban Counties, 1990*, Table 15, p. 13 (Washington DC: Bureau of Justice Statistics, 1993). Put another way, application of national conviction rates to the Wichita cases would result in 377 convictions, including 68 misdemeanor convictions.

³⁰ Under Kansas law, all convictions are counted for purposes of calculating the criminal history, regardless of whether they represent multiple offenses or a single offense involving multiple crimes. Some other states (e.g., Oregon for concurrent sentences) count only convictions involving separate criminal acts and differing conviction dates.

crime priors and 795 total prior convictions. Recognizing that many of the defendants are relatively young, without an extensive period in which to accumulate adult priors, ILJ performed a second analysis to identify the number of offenders with combined juvenile and adult records. Thus, 46 defendants were found with records of three or more violent crimes as adults or juveniles. This second recidivist cohort had 219 violent crime offenses (nearly five violent offenses per offender) and 502 total adjudications and convictions. These data also support Elliott's report of offense diversification among serious offenses.³¹ As these statistics show, less than half the offenses for which these offenders were convicted were violent offenses.

Juvenile Record Incidence

A relatively large proportion of the defendants were found to have a prior juvenile record. Among the 592 defendants charged with serious crime, 136 (only four of whom were female) had juvenile adjudications. That is 23 percent of the defendant population.

It is likely that this 23 percent figure significantly underestimates the number of adult offenders with juvenile adjudications. Among offenders aged 25 or less, 43 percent had juvenile adjudications (120 of 279 defendants). But among offenders aged 26 or more, only five percent (16 of 313 defendants) had juvenile adjudications. There are several reasons why that is so. First, the district attorney reports that until 1989, the office policy was to purge all juvenile records when the offender reached age 21. Second, the juvenile court computer system was not installed until 1990. Before that date, juvenile court paper records held at the court were also purged at age 21 and archived records were often lost or accidentally destroyed. One judge estimates that 50 percent of all older juvenile records are not available. Third, the state has been centrally holding records of serious juvenile offender records for only 10 years.

At the same time, the 43 percent figure probably overestimates juvenile record prevalence among older defendants. For example, the large numbers of drug crimes among youth in the 1980s are not characteristic of youth in previous years. At least one judge hearing criminal cases in the Wichita courts expressed his view that juveniles are more likely today to gain an adjudication record than they

³¹ Delbert Elliott, "Serious Violent Offenders: Onset, Developmental Course, and Termination—The American

were in previous years. Taking these cautions into account, a conservative estimate would be that one-third of adult offenders have juvenile adjudication records.

The types of offenses for which these offenders have juvenile adjudications does not suggest a strong propensity for violent crime. Only one-quarter of the 136 offenders with juvenile priors had been adjudicated for offenses that would be violent felonies if committed by an adult. Over one-third (35 percent) had juvenile adjudications only for nonperson offenses that did not involve violence. The remainder had a combination of adjudications for nonperson-nonviolent offenses and other crimes, such as residential burglary, that have the potential to result in violence. The significance of violent crime adjudications is even smaller compared to the incidence of such offenses among all offenses. Thus, only 9 percent of all prior juvenile adjudications were for violent offenses. In comparison, 17 percent of all adult priors were for violent offenses.

Among the 46 defendants identified as having three or more convictions or adjudications for violent offenses, 16 (35 percent) had records of juvenile adjudications. As discussed above, this is probably an underestimate because of the offenders' older ages. Limiting the analysis to those under age 26, 10 of the 14 younger offenders (71 percent) with extensive violent offense records had juvenile adjudications.

Juvenile Record Sentencing Impact

On most felony cases, consideration of the juvenile record for sentencing guideline purposes had an impact on the presumptive sentence. In 74 cases (59 percent of 126 grid-applicable felony cases), the juvenile record affected the sentence that would have been imposed if only the adult record was considered.

In over half (38) of those cases, the sentence impact was significant, either substituting incarceration for a presumptive probation sentence or increasing the incarceration sentence to be imposed.

- In nine cases, the defendant was presumed to require a prison sentence rather than probation. The average prison sentence in those cases was two years' incarceration.

Society of Criminology 1993 Presidential Address," *Criminology*, Vol. 32 (1994), p. 12.

- In three cases, the new grid location was a “border box” (authorizing judicial discretion in sentencing to either prison or probation), rather than presumed probation.
- In 13 cases, the defendant’s presumptive sentence was increased by one year or more, in one instance by 64 months. The average increase in incarceration term in these cases was over 3 years.
- In 13 other cases, the presumptive incarceration sentence was increased by less than one year’s additional imprisonment. The average increase in incarceration for these defendants was seven months.

In five instances, defendants’ juvenile adjudication records were applied to conviction sentences in two separate cases. For three of those defendants, application of the juvenile record to the second conviction resulted in additional incarceration terms (ranging from 28 months to 44 months), whereas without the juvenile adjudication the presumptive sentence would have been to probation. For two other defendants, the combination of sentence enhancements from consideration of the juvenile adjudications resulted in an additional 32 and 88 months’ incarceration, respectively.

In 36 cases, the impact of the juvenile record was to increase the presumptive probation term. As a practical matter, however, the judiciary’s practice of requiring 24 months’ probation regardless of the guidelines calculation makes this increase illusory.³²

The defendant’s juvenile record did not affect the presumptive sentence in 52 cases. In 19 cases where the defendant’s juvenile record did not affect the grid scoring, this was because the juvenile record consisted of less than three misdemeanor offenses. The result was that the criminal history grid location remained at the low end of the grid, because the adult criminal history score was also relatively minor. In most cases (33 of 52), however, the limitations on grid scoring (e.g., top score is three or more person felonies) meant that the juvenile record was irrelevant. That is, the adult criminal record was sufficient to place the defendant in a maximum score category irrespective of the severity of the juvenile score.

In two cases, the offense was off-grid because the offense was first-degree homicide. In three other cases, the offenses were off-grid because they were misdemeanor convictions.

³² Only one defendant received a probation term of less than 24 months, and no defendant was given a higher probation sentence.

Case Example. *Defendant A*, age 19, was a gang member who killed two persons and injured three others at a Fourth of July celebration. His juvenile record indicated that he was a violent person: aggravated sexual battery, aggravated battery, misdemeanor battery, and disorderly conduct. His only adult conviction, however, was for possession of marijuana, a misdemeanor. He was convicted of second-degree murder, voluntary manslaughter, attempted manslaughter, and criminal possession of a firearm. The sentencing grid location for his primary offense using only his adult prior conviction would have called for 73 months' incarceration. Inclusion of the juvenile record increased the presumptive sentence to 137 months, an increase of 64 months.

Future Impact Increases from Sentencing Guideline Changes

In 1994, the Kansas legislature adopted a "three strikes" law to incapacitate serious recidivist offenders. That law changes the presumptive sentences for defendants who are convicted of the most serious crimes and who have two or three person felony records. Application of the new sentencing standards to the 1993-94 defendants would have substantially increased the presumptive sentences. For example, Defendant A, who received a presumptive sentence of 137 months, would have received a presumptive sentence of 274 months.

Montgomery County, Maryland

Montgomery County is a suburb of Washington, D.C., and has a population of 781,000. The Circuit Court has 15 judges, of whom three are assigned to hear criminal cases. Prosecution is the responsibility of the state's attorney. The State's Attorney's Office has 40 attorneys and is responsible for filing about 1,300 felony and 2,000 misdemeanor cases annually.

Sentencing Guidelines

The Maryland courts first issued voluntary sentencing guidelines in 1981. Judges are not required to follow the sentence recommendations, but if they do not follow them they must file a report for sentencing decisions and explain why. The guidelines' recommendations are based on a sentencing grid that is based on the crime severity level and the offender's criminal history score.

Under the Maryland sentencing guidelines, a defendant's juvenile adjudication record is considered in calculating a criminal history score. A maximum of two points may be added to the criminal history score, compared to five points for an adult criminal record. Juvenile records may not be counted for defendants aged 25 or older.

Study Findings

The review of cases filed between January 1, 1993, and December 31, 1993, identified 788 cases involving 708 defendants. (The number of defendants is less than the number of cases because 74 defendants were arrested and prosecuted two or more times in the course of the year.) Those cases resulted in 611 convictions, including 42 post-conviction diversions; 101 dismissals or not-guilty findings; and 76 non-adjudicatory outcomes. Among the 708 defendants arrested and charged, record information was available for 381 defendants; of those, 37 defendants had juvenile records. Inclusion of the juvenile record in calculating a presumptive sentence under the sentencing guidelines had a significant impact on sentencing in 21 cases.

Case Outcomes

Six hundred eleven prosecutions resulted in a conviction. That sum represented 86 percent of all prosecutions and compares favorably to the national average of 64 percent convictions in all felony cases. Crimes with the highest conviction (including lesser charges) rates were burglary and drug trafficking (both at 90 percent).

Only 101 cases (13 percent) resulted in case dismissal or a not-guilty jury finding. An additional 44 cases resulted either in case dismissal before formal filing or in case file sealing. Eleven cases were transferred to another court or dismissed due to defendant death. As of the end of data collection, 21 cases were still pending, mostly because defendants failed to appear for trial or sentencing.

Prior Adult Record

Prior record information was available only for defendants who were convicted and for whom a sentencing guidelines report was prepared. The 611 cases resulting in convictions involved 531

defendants. Of these, sentencing guidelines reports were available for 381 defendants.³³ Of that number, 200 had criminal histories (52 percent).³⁴ Among the most serious felonies, defendants charged with drug trafficking (61 percent) were most likely to have prior adult convictions.

Not surprisingly, the likelihood of having a criminal record is correlated with age. Less than 43 percent of the offenders under age 26 had prior adult convictions, while 63 percent of the older offenders had adult convictions. It is not surprising, therefore, that defendants charged with weapons offenses, who had the lowest rate of prior adult records, were also younger than offenders charged with other offenses (median age 23). However, defendants charged with burglary, who also had a low incidence of prior adult convictions, were not much younger than the other offenders (median age of 25).

Juvenile Record Prevalence

Relatively few defendants were found to have prior juvenile records. Among the 381 convicted defendants for whom record information was available through a sentencing guidelines report, only 37 had juvenile adjudications³⁵ (only one of whom was female). They constitute 10 percent of the relevant defendant population. It is likely that this figure significantly underestimates the number of adult offenders with juvenile adjudications. Age 25 is the point at which the juvenile record is not applicable to the sentencing guidelines calculation. Further, interviews suggest that many juvenile records are destroyed at age 21.

Juvenile Record Sentencing Impact

In most felony cases for which complete information was available, consideration of the juvenile record for sentencing guidelines purposes had an impact upon the presumptive sentence. In 21 cases, the juvenile record affected the sentencing that would have been assigned if only the adult record had been considered. In seven of those cases, the increase in sentence was an additional year of

³³ In a few instances, guidelines reports filed in other cases involving the same defendants were used to gather prior record information.

³⁴ In comparison, 50 percent of felony defendants charged with violent offenses and drug trafficking in the 75 largest counties nationally had prior convictions, including those with only misdemeanor convictions. Defendants charged with burglary had slightly higher recidivism rates: 61 percent. See *Felony Defendants in Large Urban Counties, 1988*, Table 5 (Washington, DC: Bureau of Justice Statistics, 1990).

incarceration. In five cases, the increase was an additional two to three years' incarceration. In seven other cases, the increase was three to five years added incarceration. In two cases, the increase was to change a presumptive probation term to incarceration.

The 10 cases not affected by the guidelines score included two cases where the maximum criminal history score was assigned to the offender based solely on the adult prior record. The remaining eight cases were not affected by the juvenile score because the combined adult and juvenile records were both relatively minor and the crime seriousness score for the conviction was also relatively minor. In four of those cases, the presumptive sentence with and without juvenile record use was for probation.

Case Example. *Defendant B*, age 25, was convicted of housebreaking and theft. He had one juvenile prior and had been convicted in 1988 for a similar series of housebreakings. The increase in presumptive sentence due to the juvenile record was five to eight years' additional incarceration.

Phase II Summary

The key policy findings of this review are as follows:

- Court use of defendants' juvenile records can identify a significant number of offenders who are appropriate candidates for incapacitation sentencing. The Wichita analysis verifies the incapacitation premise that a small cadre of offenders commits a disproportionate amount of serious crime.
- Present policies and procedures identify only a fraction of all offenders with juvenile adjudication records. Juvenile record keeping is inadequate and operates to the detriment of the sentencing guidelines inclusion of adjudication records in calculating the criminal history score. The difficulty is exacerbated in Maryland, where only about half of all convicted defendants are subject to guidelines sentencing, notwithstanding any requirements to the contrary.
- The added incapacitation from consideration of juvenile adjudications is significant and occurs during defendants' most crime-prone years.

³⁵ Three of these defendants were each convicted in two separate cases in the case universe.

Record-Decay Rule Changes

One factor that needs further examination is what the effect of nonperson juvenile offenses should be and whether their significance differs from that of nonperson adult felonies. That is, the data suggest that juvenile offenders typically progress from juvenile nonviolent to adult violent offenses, while adult offenders without juvenile priors do not show such progression. That further suggests that rules in both jurisdictions limiting juvenile record use at age 25 does not well serve any incapacitation objectives.

Possible Structural Changes to Guidelines

The scoring of juvenile records for calculating a criminal history score results in increased incapacitation of a significant number of offenders. Other scoring systems can increase or decrease that effect, depending on record decay provisions and the grid structure used to specify the effect of criminal history (from either adult or juvenile records) on the presumptive sentence. Within a guidelines sentencing structure, the key factors that the guidelines must consider are these:

- Whether juvenile and adult records should be considered equivalent
- Whether records should decay at a specified age and, if so, which records
- Whether to set caps on criminal record scoring by type of prior crime

Summary and Discussion

Study Findings: A Policy Summary

The two study phases illuminate both (1) national policies and practices regarding juvenile record use and (2) the potential impact such use has on prosecution and court decisionmaking. The study's key policy findings are these:

- A small cadre of adult offenders is convicted of a disproportionate share of all serious crimes. A record of juvenile crime is one factor that distinguishes those offenders.
- Only a few states' laws ensure that the juvenile records of recidivist serious offenders are both available and used to increase incapacitation. In addition, inconsistencies in many states' laws contribute to recordkeeping failures that limit the juvenile records' utility.

- In practice, therefore, juvenile record use by prosecutors and courts is far less than it could be.
- Using records in a targeted manner has a significant impact on incapacitative sentencing. However, many states that direct use of the juvenile record for sentencing often compromise this principal by setting limits on their relevance.

Incapacitation of a Small Cadre of Serious Offenders

Depending on the criteria used, between 8 and 16 percent of defendants charged with serious crimes could be classified as recidivist violent offenders. Those with prior juvenile adjudications were among the most serious offenders.

The Wichita data, in conjunction with data from state sentencing guidelines commissions, further shows that the incidence of juvenile records among offenders is significant; perhaps one-third of all serious offenders have such records. The implication is, of course, that targeting an incapacitation strategy at those offenders is practical. The juvenile record is especially useful for targeted incapacitation directed at the most serious recidivist offenders.

Legislative Inconsistencies

While state law generally approves court use of juvenile adjudication records for sentencing purposes, other laws either contradict that position or fail to establish other mandates needed to implement the principle. The review of state legislation found that no more than a dozen states have laws that make juvenile records routinely available to court decisionmakers and structure their use to increase incapacitation of serious offenders.

Limited Juvenile Record Use

The national survey of prosecutors found that they vary significantly both in the frequency with which they use defendants' juvenile records and the purposes for which they use them. The key factors explaining that variance are record availability and perceived utility. On the national level, the variability with which juvenile records are available is a significant factor for prosecutors' views of record utility. Further, prosecutors' views may vary considerably in how they assess the relevance of prior records for much discretionary decisionmaking, particularly for case screening and charging where strength of the

evidence may be the only factor considered. The result of both limited availability and differing mission statements is that only in nine states do prosecutors routinely use juvenile record information for pretrial purposes; in two of those states, that may be because special sentencing laws require that juvenile adjudication records be cited in the charges invoking those laws.

Impacts and Limitations

Where the juvenile record is both available and used in a structured manner, its use results in significant increases in incapacitation sentencing. However, the Phase II fieldwork in both Wichita and Montgomery County showed that juvenile record availability and use can be significantly increased. The sentencing guidelines structure used by Kansas and Maryland is only one way to structure juvenile record use at sentencing. Other sentencing structures can achieve the same incapacitation goals. They include presumptive sentencing laws like California's, three strikes laws like those in California and Louisiana, and other laws requiring consideration of the juvenile record in determining whether to sentence to probation or to an incarceration term.

Recommendations

A starting point for the study is the assumption that criminal court use of juvenile adjudication records is appropriate and potentially useful. Phase I found how laws influence practitioners' use of juvenile records and identified the need for legislative and practice changes in most states. The field study built on those findings and led to recommendations for practice changes at the two critical decisionmaking points: pretrial and sentencing.

Increased Pretrial Use

Increased use of juvenile adjudication records during the pretrial steps may occur at several points, including pretrial release, grand jury or preliminary hearing, charging, and plea negotiations. As a practical matter, the point at which expanded information is needed is during plea negotiations.

Decisions at charging and indictment or bind-over should primarily depend on the strength of the evidence.³⁶

The most significant barrier to increasing prosecutors' use of juvenile records is the historical tradition of record confidentiality that is attached to juvenile court proceedings. This in its most extreme form leads to conflict between the principle of record confidentiality and statutes authorizing record use by the criminal court. Thus, in at least two states, Florida and Maryland, juvenile justice authorities seek to destroy juvenile records while use of those records is still required by the criminal court for sentencing purposes.

Increased Incapacitation

The starting point for increased incapacitation is the several laws that already provide for some measure of increased sentencing. As the Phase II findings show, these laws suffer from limitations on their effectiveness. The two jurisdictions studied differ sharply in how they weigh the juvenile record compared to the adult record in calculating a criminal history score. Kansas counts the juvenile record as equal to the adult record; however, nonperson offenses and lesser drug convictions decay at age 25. Maryland, in contrast, limits the total points from juvenile records and sets an age cap of 25, beyond which the juvenile record is not counted. Both of those laws fail to maximize incapacitation effects.

Juvenile Court Implications

Recent research about the prevalence of juvenile violent crime and its relationship to adult crime strongly points to society's need to identify career criminals, especially during their young adult years when they are most active. But authorizing adult court use of juvenile records also has implications for the future of the juvenile court. Thus, at one level it may be argued that such use contradicts the purposes of the juvenile court—to give the offender a second chance. In support of that position, the rules providing for confidentiality of juvenile records seemingly prohibit, in spirit at least, such later use.

The opposing position views adult court use of juvenile records as an alternative to waiver and direct file laws that bypass the juvenile court entirely. Clearly, one consideration in legislation

³⁶ See David James, "The Prosecutor's Discretionary Screening and Charging Authority," *The Prosecutor*, Vol. 29, pp. 22, 24, March/April 1995 ("No charges should be filed unless there is a reasonable probability of conviction . . .

broadening juvenile waiver laws is concern about “first offender” masquerades, where the adult criminal court is not aware of a defendant’s prior juvenile adjudications. Thus, the typical consequence of waiver is that future offenses will automatically be subject to criminal court processing and the juvenile record will be available to the criminal court through the waiver record. Ensuring juvenile record access at the adult court level means that prosecutors may be less likely to seek waiver in borderline cases. Reluctance to share information may not be based solely on philosophical objections. It may also involve concerns that by sharing information the agency will be perceived by its “clients” seen as acting as an agent of law enforcement instead of rehabilitation.

The point is that authorizing criminal court use of the juvenile record and implementing that authority involves a shift from “the best interests of the child” to “interests of public safety.” Other changes may be required, such as imposing a right to a jury trial.³⁷ It is too early to determine the full scope of the meaning of criminal court use of juvenile records, but some changes will occur.

One change virtually certain to occur is an increased adversarial tenor in the juvenile court. At present, as Barry Feld has noted, “there is no formal relationship between the offense to which a juvenile pleads and the eventual disposition.”³⁸ The specific offense which a juvenile admits violating has no effect on the authority of the juvenile court to set a dispositional sentence. But with the collateral consequences of an adjudication being often based on the specific charge, prosecutors will be less willing to dismiss more serious charges for admissions to less serious charges. Conversely, defense counsel may be less willing to allow clients to admit charges, even if that increases the risk of a juvenile incarceration order.

. . .”) (citing California District Attorney Association “Standard” 4.2(A)(d)).

³⁷ See Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System, “Final Report,” *William Mitchell Law Review*, Vol. 20, p. 595 (1994), linking sentencing guideline full use of juvenile record with right to jury trial. One factor underlying the Supreme Court decision in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), upholding non-jury trial proceedings in juvenile court, was the fear that a fully adversarial juvenile justice system might result in unwanted publicity; the contention was that disclosure of juvenile identity could weaken rehabilitation efforts and stigmatize the juveniles. “Final Report,” pp. 545-547.

³⁸ Barry Feld, “Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform,” *Minnesota Law Review*, Vol. 79 (1995), pp. 985, 1066.

Appendix A: Exhibits

Exhibit 1: State Laws: Fingerprinting Authority (45 states), 1994

Limits on Fingerprinting Authority

STATE	AGE LIMITS	CRIME LIMITS
Alabama	14 or older	Felony
Alaska	16 or older	Felony
Arkansas	None	None
California	None	None
Colorado	Implicit authority/ no limits	Implicit authority = no limits
Connecticut	14 or older	Felony charge
Delaware	Implicit authority/ no limits	Implicit authority = no limits
Florida	None	Felony and serious misdemeanor
Georgia	13 or older	Specified crimes
Hawaii	NA	NA
Idaho	None	None
Illinois	None	Forcible felony or weapons
Indiana	15 or older	Felony
Iowa	14 or older	Felony/aggravated misdemeanor
Kansas	None	Felony
Kentucky	None	None
Louisiana	None	Felony or weapon charge
Maine	None	None
Maryland	Age 14; 16 for some crimes	Serious felonies
Massachusetts	None	None
Michigan	None	None
Minnesota	None	Felony
Mississippi	None	Felony or weapons charge
Missouri	NA: Forbids fingerprinting	NA
Montana	None	Felony
Nebraska	14 or older	None
Nevada	14 or older	Felony
New Jersey	14 or older	None
New York	11 or older/13 or older	A or B felony/C felony
North Carolina	NA: Forbids fingerprinting	NA
North Dakota	14 or older	Specified serious crimes
Ohio	None	Felony
Oklahoma	None	None
Oregon	None	Felony or misdemeanor
Pennsylvania	None	Felony or firearm charge
South Carolina	None	Violent felony
South Dakota	Implicit authority = no limits	Implicit authority = no limits
Tennessee	None	Felony
Texas	15 or older/none	Felony/specified serious felonies
Utah	14 or older	Felony
Vermont	None	None
Virginia	14 or older; 13 for violent felony	Felony
Washington	None	Felony or gross misdemeanor
Wisconsin	None	None
Wyoming	None	Felony

Exhibit 2: State Laws Authorizing/Forbidding Central Holding of Juvenile History Records (39 states), 1994

Type of Repository Holding Juvenile Records

STATE	ADULT RECORD REPOSITORY	JUVENILE RECORD REPOSITORY
Alabama	Fingerprint only for ID purposes	
Alaska	Authorized	
Arkansas	Authorized	
California	Authorized	
Delaware	Authorized	
Florida	Authorized	
Georgia	Bar repealed	
Hawaii	No authority	Authorized
Illinois	Authorized	
Indiana	Authorized	
Iowa	Fingerprint only for ID purposes	
Kansas	Authorized	
Kentucky	Authorized	
Louisiana	Fingerprint only for ID purposes	
Maine	Authorized	
Maryland	Authorized	
Massachusetts	Authorized	
Michigan	Authorized	
Minnesota	Authorized	
Mississippi	Central record forbidden	Authorized
Nebraska	Implied reference authority	
Nevada	Fingerprint only for ID purposes	
New Jersey	Fingerprint only for ID purposes	
New Mexico	Implied reference authority	
New York	Authorized	
North Dakota	Central record forbidden	
Oklahoma	Authorized (serious offenders)	Authorized
Oregon	Central record forbidden	
Pennsylvania	Authorized	
Rhode Island	Authorized	
South Carolina	Authorized (violent offenders)	
Tennessee	Authorized	
Texas	Central record forbidden	
Utah	Authorized	
Vermont	Central record forbidden	
Virginia	Authorized	Authorized
Washington	Authorized	
Wisconsin	Authorized	
Wyoming	Authorized	

Exhibit 3: Criminal Court Access to Juvenile Records by State, 1994 (50 states)

STATE	PROSECUTOR	PROBATION OFFICER	JUDGE	CENTRAL RE-POSITORY HOLDS JUV. RECORDS	SENTENCING LAW
Alabama	NA	Can see	NA	NA	
Alaska	NA	PSI report	NA	Authorized to hold	Record is factor
Arizona	NA	NA	NA	NA	Record is factor
Arkansas	Can see	NA	Can see	Authorized to hold	
California	Can see	NA	NA	Authorized to hold	Record is factor
Colorado	Can see	NA	NA	NA	
Connecticut	Can see some	Can see	Can see	NA	
Delaware	NA	NA	NA	Authorized to hold	
Florida	Can see	NA	Can see	NA	Record is factor
Georgia	NA	PSI report	NA	NA	
Hawaii	NA	NA	Can see	NA	Record is factor
Idaho	Can see	NA	NA	NA	Record is factor
Illinois	Can see	Can see	Can see	Authorized to hold	Record is factor
Indiana	Can see	Can see	Can see	Authorized to hold	Record is factor
Iowa	NA	PSI report	Can see	NA	
Kansas	Can see	PSI report	Can see	Authorized to hold	Record is factor
Kentucky	Can see	PSI report	NA	Authorized to hold	
Louisiana	Can see	Can see	Can see	NA	Record is factor
Maine	NA	PSI report	Can see	Authorized to hold	
Maryland	NA	PSI report	NA	NA	Record is factor
Massachusetts	NA	PSI report	NA	Authorized to hold	
Michigan	NA	PSI report	NA	Authorized to hold	Record is factor
Minnesota	Can see some	PSI report	NA	Authorized to hold	Record is factor
Mississippi	Can see	Can see	Can see	NA	
Missouri	NA	PSI report	NA	NA	
Montana	Can see	Can see	Can see	NA	Record is factor
Nebraska	NA	Can see	Can see	NA	
Nevada	NA	Can see	NA	NA	
New Hampshire	NA	PSI report	NA	NA	
New Jersey	Can see	PSI report	NA	NA	Record is factor
New Mexico	Can see	PSI report	NA	NA	
New York	NA	PSI report	NA	Authorized to hold	
North Carolina	Can see	NA	NA	NA	Record is factor
North Dakota	NA	Can see	Can see	NA	
Ohio	NA	NA	NA	NA	Record is factor
Oklahoma	NA	PSI report	NA	Authorized to hold	
Oregon	NA	PSI report	Can see	NA	Record is factor
Pennsylvania	NA	PSI report	NA	Authorized to hold	Record is factor
Rhode Island	Can see	PSI report	NA	Authorized to hold	Record is factor
South Carolina	Can see some	PSI report	NA	Authorized to hold	
South Dakota	Can see	Can see	Can see	NA	
Tennessee	NA	Can see	Can see	Authorized to hold	
Texas	Can see	NA	NA	NA	
Utah	NA	PSI report	NA	Authorized to hold	Record is factor
Vermont	Can see	NA	Can see	NA	
Virginia	NA	Can see	NA	Authorized to hold	
Washington	Can see	NA	NA	Authorized to hold	Record is factor
West Virginia	NA	PSI report	NA	NA	Record is factor
Wisconsin	NA	PSI report	NA	Authorized to hold	
Wyoming	NA	PSI report	NA	Authorized to hold	

NA = Not Authorized					
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Exhibit 4: State Criminal Sentencing Laws Authorizing Use of Juvenile Records by Type of Sentencing Law (24 states), 1994

Type of Sentencing Law

STATE	WITH SENTENCING GUIDELINES	FOR PRESUMPTIVE SENTENCING LAW	AS PROBATION FACTOR
Alaska		Prior juv. disp. affects	
Arkansas	Prior juv. disp. used		
California		Prior juv. disp. affects and counts for three strike law	
Florida	Prior juv. disp. used		
Hawaii			Prior juv. disp. weighed
Idaho			Prior juv. disp. weighed
Illinois			Prior juv. disp. weighed
Indiana			Prior juv. disp. weighed
Kansas	Prior juv. disp. used		
Louisiana	Prior juv. disp. used	Habitual offender law	
Maryland	Prior juv. disp. used		
Michigan	Prior juv. disp. used		
Minnesota	Prior juv. disp. used		
Montana			Prior juv. disp. weighed
New Jersey		Prior juv. disp. affects	Prior juv. disp. weighed
North Carolina	Prior juv. disp. used		
North Dakota			Prior juv. disp. weighed
Ohio			Prior juv. disp. weighed
Oregon	Prior juv. disp. used		
Pennsylvania	Prior juv. disp. used		
Rhode Island	Prior juv. disp. used		
Utah	Prior juv. disp. used		
Washington	Prior juv. disp. used		
Wisconsin	Prior juv. disp. used		

Exhibit 5: State Juvenile Court Age Limits and Concurrent Criminal Court Jurisdiction, 1994

STATE	AGE: JUVENILE COURT LIMIT	DISCRETIONARY OR MANDATORY DIRECT FILE/REVERSE WAIVER
Alabama	18	Direct file req'd: age 16 & viol. felony or drug trafficking
Alaska	18	Direct file req'd: age 16 & viol. felony
Arizona	18	None
Arkansas	18	Prosecutor discretion to file in either court: age 16 & felony
California	18	None
Colorado	18	Pros. dir. file auth.: 14 & Class I felony or 16 & viol. fel. or fel plus priors
Connecticut	16	None
Delaware	18	Direct file req'd in violent felony; reverse waiver hearing available
Florida	18 (earlier acts: no limit)	Pros. dir. file auth: 14 & viol. fel.; 16-17 & felony or misd. + prior felony Pros. dir. file req'd: age 16, viol fel. & prior viol. fel.; or 3 pr. juv. cmtmnts
Georgia	17	Pros. direct file req'd if age 13 in violent felony cases. Reverse waiver auth. Remand for sentencing if lesser charge conviction
Hawaii	18 (19 for earlier acts)	None
Idaho	18	Pros. direct file req'd: age 14 & viol. fel. or drug dealing/possession
Illinois	17	Direct file req'd: age 15 & murder, rape, armed robbery, or drug traf./sch'l.
Indiana	18 (21 for earlier acts)	Direct file req'd: age 16 & viol. felony, gang activity, or weapons violation
Iowa	18	None
Kansas	18	Direct file req'd: age 16 & felony + one prior felony
Kentucky	18	Direct file req'd: age 14 & use of firearms
Louisiana	17	Dir. file auth./mand. waiver hearing: age 15 & viol fel.; 16 & lesser viol. fel.
Maine	18	None
Maryland	18	Direct file req'd in capital (age 14) and violent felony (16); rev. waiver
Massachusetts	17 (18 for earlier acts)	None
Michigan	17	Direct file auth.: age 15 & viol. felony, carjacking, or drug dealing
Minnesota	18 (21 for earlier acts)	Dir. file req'd: murder 1; FTA for juv. court disposition hearing in felonies
Mississippi	18 (20); 17 for felonies	Direct file req'd in life & weapon cases; reverse waiver hearing available
Missouri	17	None
Montana	18 (21 for earlier acts)	None
Nebraska	18	Pros. direct file auth. if felony or misd if age 16; reverse waiver
Nevada	18 (21 for earlier acts)	Direct file req'd for murder or attempted murder
New Hampshire	18 (19 for earlier acts)	None
New Jersey	18	None
New Mexico	18	Direct file req'd: age 16 and murder 1
New York	16	Direct file req'd: 13-15 & designated felonies; reverse waiver
North Carolina	16	None
North Dakota	18 (20 for earlier acts)	None
Ohio	18 (earlier acts: no limit)	None
Oklahoma	18	Direct file req'd: 15-17 & viol. fel. or drug trafficking; age 13, murder 1 Direct file auth.: age 15 & viol. crime or drug dealing, or felony + 3 priors Reverse waiver to youth offender proceeding in juvenile court
Oregon	18	Direct file req'd: violent felony & age 15
Pennsylvania	18 (21 for earlier acts)	Direct file req'd in homicide; reverse waiver hearing available
Rhode Island	18 (21 for earlier acts)	None
South Carolina	17	Direct file authorized: age 16 & A-D felony
South Dakota	18 (21 for earlier acts)	None
Tennessee	18	Direct file auth.: violent felonies
Texas	17 (18 for earlier acts)	None
Utah	18 (21 for earlier acts)	Pros. direct file auth.: age 16 & viol. felonies; Youth Corrections custody authorized. Recall hearing in juvenile court for some direct file cases
Vermont	18	Direct file req'd: age 14 & viol. fel; reverse hearing Pros. direct file auth.: 16 in any fel., 10 in violent; reverse waiver hearing Lesser crime conviction, return to juv. court for disposition
Virginia	18	None
Washington	18	Direct file req'd: Age 16, 17 + viol fel.
West Virginia	18	None
Wisconsin	18	None
Wyoming	18	Pros. direct file auth.: 17, in any crime case; age 14 & viol. felony or felony

		+ two priors; reverse waiver hearing
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Exhibit 6: State Laws Providing for Waiver to Adult Court, 1994

STATE	AGE LIMITS	CRIME LIMITS	SPECIAL WAIVER LAWS
Alabama	14 or older	None	None
Alaska	None	None	None
Arizona	None	None	None
Arkansas	14 or older	Felony	None
California	16 or older	None	Waiver presumed; specified viol. felonies
Colorado	14 or older	Felony	None
Connecticut	14 or older	Felony	Mand. transf.: age 14 & capital crime or A or B fel. + prior
Delaware	16/14 or older	None/violent crimes	None
Florida	14 or older; none if life sentence charge	Felony or serious misdemeanor	None
Georgia	15 or older; 13 if life sentence charge	None	Mandatory transf.: age 15, burglary charge + 3 priors; remand hearing
Hawaii	16 or older	Viol. fel. or 2 prior fel.	Mand. transf.: age 16 & Class A felony + prior Class A or 2 priors
Idaho	14 or older	None	None
Illinois	13 or older		Mand. trans.: age 15 & forc. fel. + prior
Indiana	16 or older; 14 if heinous	Specified felonies	Presumed waiver if age 10 + homicide; age 16 + Class A or B fel. or C homic.; mand. transf. if fel. + prior + pros. ask
Iowa	14 or older	None	None
Kansas	16 or older; 14 if A felony	None	None
Kentucky	16 or older; 14 if A/B fel.	C or D felony + priors	None
Louisiana	14	Specified viol. crimes	None
Maine	None	A,B,C felony	None
Maryland	15 or older; none if life sent.	None	None
Massachusetts	14 or older	Viol. or felony + prior	Waiver presumed in violent cases
Michigan	15 or older	Felony	None
Minnesota	14 or older	None	Waiver presumed, spec. cases & age 16
Mississippi	13 or older	None	Remand hearing after transfer available
Missouri	14 or older	None	None
Montana	16 or older; 12 if hom./rape	Violent felony	None
Nebraska	No waiver	No waiver	Pros. discretion to file & reverse waiver
Nevada	16 or older	Felony	None
New Hampshire	None	Felony	None
New Jersey	14 or older	Violent crimes, etc.	Waiver mand.: age 14 + violent felonies or criminal gang
New Mexico	No waiver	No waiver	Adult sentence avail. to juv. court if 15 or older w/violent crime or fel. + priors
New York	No waiver	No waiver	None
North Carolina	13 or older	Felony	Mandatory waiver: 13 & Class A felony
North Dakota	14 or older	None	None
Ohio	15 or older	Felony	Mand. waiver if murder + prior murder
Oklahoma	None	Felony	None
Oregon	15 or older	Felony	None
Pennsylvania	14 or older	Felony	None
Rhode Island	16 or older none	Felony Life sentence charge	Mandatory waiver: age 17 + violent felony
South Carolina	16 or older; 14 if A-D fel.	Felony or misd.	Youthful offender law filing
South Dakota	None	Felony	None
Tennessee	16 or older; none if violent	None	None
Texas	15 or older	Felony	None
Utah	14 or older	Felony	None
Vermont	10 or older	Violent crime	None
Virginia	14 or older	Felony	Minim. waiver and remand hearing if violent felony
Washington	17 or older; 15 if A felony	Violent felony	None
West Virginia	16 or older; none if viol. +	Felony + priors	Mandatory waiver for violent crimes
Wisconsin	16; 14 if violent felony	None	None
Wyoming	13 or older	None	None

Exhibit 7: State Expungement Laws by Type and Eligibility Requirements, 1994

STATE	AGE ELIGIBILITY	EXPUNGE or SEAL	OTHER CONDITIONS
Alabama	Under 23; 23	Sealing; expungement	Subsq. conv. nullifies sealing
Alaska	18 or release from custody	Sealing	Mandated
Arizona	18 or 23	Expungement	
Arkansas	21	Expungement	Mandatory
California	18	Sealing; expungement	Expung. 5 years after sealing
Colorado	None	Sealing	No serious felony
Connecticut	16	Expungement	
Delaware	None	Expungement	
Florida	24	Expungement	Serious crimes sealed only
Georgia	None	Sealing	
Hawaii	None	Expungement	
Idaho	18	Sealing	
Illinois	None	Expungement	No Murder 1
Indiana	22	Sealing	Mandated unless later felony
Iowa	21	Sealing	Fingerprints expunged
Kansas	None	Expungement	Specified crimes excluded
Kentucky	None	Expungement	
Louisiana	17	Expungement	Specified crimes excluded
Maine	None	Sealing	
Maryland	None	Sealing	Mandatory
Massachusetts	None	Sealing	
Michigan	24	Set aside	Not applicable to life crimes
Minnesota	23	Expungement	
Mississippi	20	Sealing	
Missouri	17	Sealing	
Montana	18	Sealing	
Nebraska	None	Expungement	
Nevada	None	Sealing	Mandatory at age 24
New Hampshire	19	Sealing	Mandatory
New Jersey	None	Sealing	
New Mexico	None	Sealing	
New York	16	Expungement	Designated felonies excepted
North Carolina	16	Expungement	
North Dakota	16	Expungement	
Ohio	None	Sealing	
Oklahoma	None	Sealing	
Oregon	None	Expungement	
Pennsylvania	None	Expungement	
Rhode Island	None	None	
South Carolina	18	Expungement	Nonviolent offenses only
South Dakota	None	Sealing	
Tennessee	18	Expungement	
Texas	None	Sealing	
Utah	None	Expungement	
Vermont	None	Sealing	
Virginia	19	Expungement	Mandatory at 29
Washington	None	Sealing	Subseq. offense negates seal.
West Virginia	19	Sealing	Mandatory
Wisconsin	None	None	

Wyoming	18	Expungement	
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Exhibit 8: Prosecutor Juvenile Record Access: State, Frequency, Sources, Use

STATE	FREQ. OF RECORD USE	FROM OFFICE FILES	FROM JUV. COURT	FROM PSI REPORT	FROM POLICE	FROM REC. REPOS.	FROM OTHER SOURCE	PRIMARY USE
Alabama	Occasional	Yes		Yes (2)				Charging
Alaska	Occasional		Yes	Yes				Sentence
Arizona	Routine	Yes						Charging
Arkansas	Routine		Yes					Plea negot.
California	Routine	Yes	Yes (2)	Yes	Yes	Yes (2)		Charging
Colorado	Occasional	Yes (2)		Yes	Yes (2)			Sentence
Connecticut	Never	Other agency						NA
Delaware	Routine		Yes (2)	Yes		Yes (2)		Sentence
Florida	Routine	Yes	Yes (2)	Yes		Yes (2)	Yes (2)	Charg./sent.
Georgia	Varies			Yes	Yes			Sentence
Hawaii	Routine	Yes				Yes		Investigate
Idaho	Routine	Yes (2)		Yes				Sentence
Illinois	Varies	Yes	Yes					Charg./sent.
Indiana	Routine			Yes	Yes (2)			Sentence
Iowa	Occasional	Yes	Yes					Plea negot.
Kansas	Routine		Yes			Yes		Plea negot.
Kentucky	Routine	Other agency		Yes				Sentence
Louisiana	Varies	Yes	Yes (2)		Yes			Screen/sent.
Maine	Occasional	Yes						Charging
Maryland	Occasional	Yes (2)		Yes				Sentence
Massachusetts	Varies		Yes			Yes		Charging
Michigan	Routine	Yes			Yes (2)		Yes (2)	Charging
Minnesota	Occasional	Yes						Sentence
Mississippi	Never	Other agency						NA
Missouri	Never	Other agency						NA
Montana	Routine	Yes	Yes (2)	Yes (2)			Yes (2)	Sentence
Nebraska	Routine	Yes		Yes (2)	Yes			Charging
Nevada	Routine			Yes				Sentence
New Hampshire	Rarely	Other agency	Yes					NA
New Jersey	Routine	Yes		Yes	Yes (2)			Charg./sent.
New Mexico	Occasional	Yes						Plea negot.
New York	Occasional	Other agency	Yes					Grand jury
North Carolina	Occasional	Yes	Yes					Plea negot.
North Dakota	Rare	Yes (2)		Yes				Sentence
Ohio	Varies	Yes	Yes					Charg./sent.
Oklahoma	Occasional	Yes					Yes (2)	Plea negot.
Oregon	Occasional		Yes					Plea negot.
Pennsylvania	Varies	Yes	Yes	Yes	Yes (2)			Plea/sentence
Rhode Island	Routine		Yes					Plea negot.
South Carolina	Routine	Yes (2)					Yes	Grand jury
South Dakota	Routine	Yes			Yes (2)			Charging
Tennessee	Occasional		Yes				Yes	Charging
Texas	Occasional	Yes (2)	Yes					Sentence
Utah	Occasional	Yes		Yes (2)				Plea negot.
Vermont	Rare	Yes (2)		Yes				NA

Virginia	Occasional	Yes (2)	Yes (2)		Yes			Sentence
Washington	Routine					Yes		Charging
West Virginia	Occasional	Yes						Sentence
Wisconsin	Routine	Yes			Yes (2)	Yes		Charg./plea
Wyoming	Routine	Yes						Charging

Yes=major source; Yes (2)=secondary or lesser source

Exhibit 9: State Central Repository Holdings of Juvenile Records

Other Types of Records Held

STATE	JUVENILE COURT RECORD REPOSITORY	JUVENILE TRIED AS ADULT	FINGERPRINT IDENTIFICATION
Alabama	None	Yes	Authorized
Alaska	Youth Services (adult also authorized)	No	No
Arizona	None	Yes	No
Arkansas	Adult	No	No
California	Adult	No	No
Colorado	None	No	Yes
Delaware	Adult	No	No
Florida	None	Yes	Yes
Georgia	Forbidden	Yes	No
Hawaii	None	Yes	No
Idaho	None	Yes	Yes
Illinois	Adult	No	No
Indiana	Adult	No	No
Iowa	None	Yes	No
Kansas	Adult	No	No
Kentucky	None	Yes	No
Louisiana	Adult authorized	No	No
Maine	Adult	No	No
Maryland	Youth Services	Yes	No
Massachusetts	Adult	No	No
Michigan	Adult	No	No
Minnesota	Adult	No	No
Mississippi	Forbidden	Yes	No
Missouri	None	Yes	No
Montana	None	Yes	No
Nebraska	Adult authorized	No	No
Nevada	None	Yes	Yes
New Hampshire	None	Yes	No
New Jersey	Adult authorized	Yes	No
New Mexico	Adult	No	No
New York	Adult	No	No
North Carolina	None	Yes	No
North Dakota	Forbidden	Yes	No
Ohio	None	Yes	No
Oklahoma	Youth Services	Yes	No
Oregon	Adult	No	No
Pennsylvania	Adult	No	No
Rhode Island	Central Records	No	No
South Carolina	Adult	No	No
South Dakota	None	Yes	No
Tennessee	Adult	No	No
Texas	Forbidden	Yes	No
Utah	Youth Services	Yes	Yes
Vermont	Forbidden	Yes	No
Virginia	Adult	No	No
Washington	Adult	No	No
West Virginia	Adult	No	No
Wisconsin	Adult	No	No
Wyoming	Adult	No	No

Exhibit 10: Highest Charge for Case Prosecutions—Wichita

<u>Highest Charge</u>	Number of Cases	Number of Defendants
	<u>Prosecuted</u>	<u>Prosecuted*</u>
Murder	28	26
Attempted murder	7	7
Rape	20	18
Kidnapping	24	22
Robbery	71	63
Aggravated assault	114	97
Other sex crime	16	15
Burglary	185	175
Drug trafficking	113	105
Weapons offense	64	60
Other serious felonies	<u>4</u>	<u>4</u>
Total	647	592

* As reported above, 35 defendants were arrested and prosecuted two or more times in the course of the study period. The most recent prosecution was chosen as the case prosecution listed in the table.

Exhibit 11: Highest Charge for Which Defendants Were Convicted of Felonies—Wichita

<u>Highest Charge</u>	Number of Cases	Conviction Rate (Percent)
	<u>Resulting in Felony Convictions</u>	
Murder	24	86
Attempted murder	6	86
Rape	14	70
Kidnapping	16	67
Robbery	63	89
Aggravated assault	64	56
Other sex crime	10	63
Burglary	149	81
Drug trafficking	82	73
Weapons charge	47	73
Other felony charges	<u>2</u>	50
Total (all felonies)	477	74

Exhibit 12: Cases with Non-Felony Conviction Outcomes–Wichita

<u>Case Outcome</u>	<u>Number of Cases</u>
Misdemeanor	46
Diversion	25
No conviction*	94
Pending	4
Total	169

* This number includes two cases where the defendant was found not guilty by reason of insanity.

Exhibit 13: Number of Defendants with Adult Convictions by Highest Charge–Wichita

<u>Highest Charge</u>	<u>Total Number of Defendants</u>	<u>Number with Adult Record</u>	<u>Percent with Adult Record</u>
Murder	26	18	69
Attempted murder	7	2	29
Rape	18	9	50
Kidnapping	22	16	73
Robbery	63	47	75
Aggravated assault	97	62	64
Other sex crime	15	4	27
Burglary	175	113	65
Drug trafficking	105	64	61
Weapons violation	60	42	70
Other serious felonies	4	2	50
Total	592	379	64

Exhibit 14: Analysis of Case Flow for Defendants with Juvenile Record–Wichita

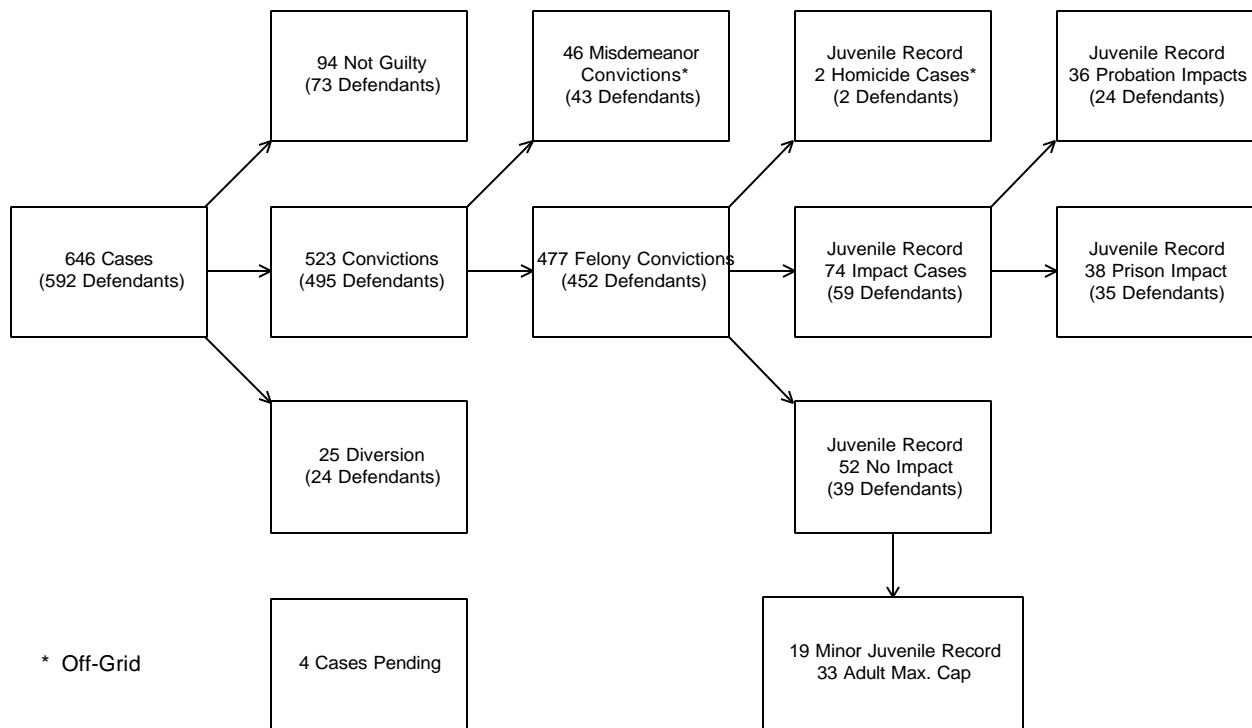


Exhibit 15: Juvenile Record Prevalence–Wichita

	<u>Number of Defendants</u>	<u>Juvenile Record</u>	<u>Percent</u>
All defendants	592	136	23
Under age 26	279	120	43
Age 26 and older	313	16	5

Exhibit 16: Juvenile Record Prevalence by Most Serious Crime Charge—Wichita

<u>Adult Charge</u>	<u>Number with Juvenile Record</u>	<u>Percent with Juvenile Record</u>
Murder	9	35
Attempted murder	2	29
Rape	3	17
Kidnapping	4	18
Robbery	16	25
Aggravated assault	20	21
Other sex crime	0	0
Burglary	51	29
Drug trafficking	14	13
Weapons violation	17	28
Other serious felony	<u>0</u>	0
Total	136	23

Exhibit 17: Sentence Impact from Juvenile Adjudication Inclusion in Guidelines Calculation—Wichita

<u>Impact/No Impact</u>	<u>Number of Cases</u>
Increased incarceration	38
Increased probation	36
No effect	52
Off-grid	<u>5</u>
Total	131

Exhibit 18: Highest Charge For Case Prosecutions–Montgomery County

<u>Highest Charge</u>	Number of Cases	
	<u>Prosecuted</u>	<u>Number of Defendants Prosecuted*</u>
Murder	29	29
Attempted murder	12	11
Rape	47	43
Kidnapping	10	10
Robbery	172	144
Aggravated assault	155	140
Other sex crime	24	21
Burglary	112	97
Drug trafficking	136	128
Weapons offense	81	76
Other serious felonies	9	9

* As reported above, defendants were arrested and prosecuted two or more times in the course of the study period. The most recent prosecution was chosen as the case prosecution listed in the table.

Exhibit 19: Highest Charge for Which Defendants Were Convicted of Felonies–Montgomery County

<u>Highest Charge</u>	Number of Cases	
	<u>Resulting in Convictions</u>	<u>Probation before Judgment</u>
Murder	18	0
Attempted murder	5	1
Rape	15	0
Kidnapping	4	0
Robbery	122	3
Aggravated assault	93	7
Other sex crime	33	1
Burglary	81	3
Drug trafficking	113	12
Weapons charge	66	15
Other felony charges	<u>61</u>	<u>0</u>
Total	611	42

Exhibit 20: Cases with Non-Felony Conviction Outcomes–Montgomery County

<u>Case Outcome</u>	<u>Number of Cases</u>
No Conviction*	101
File Sealed etc.	44
Transfer, death, etc.	11
Pending	<u>21</u>
Total	<u>177</u>

* This number includes two cases where the defendant was found not guilty by reason of insanity.

Exhibit 21: Number of Defendants with Adult Convictions by Highest Charge–Montgomery County

<u>Highest Charge</u>	<u>Total Number of Defendants</u>	<u>Number with Adult Record</u>
Murder	11	6
Attempted murder	4	1
Rape	8	4
Kidnapping	3	3
Robbery	80	40
Aggravated assault	44	24
Other sex crime	11	5
Burglary	47	27
Drug trafficking	70	43
Weapons violation	47	12
Other serious felonies	<u>6</u>	<u>35</u>
Total	381	200

Exhibit 22: Juvenile Record Prevalence–Montgomery County

	<u>Number of Defendants</u>	<u>Juvenile Record</u>	<u>Percent</u>
All Defendants	381*	37	10
Under age 25	226	35	16
Age 25 & Older	124	2	2

* Defendant age information was not available in all cases.

**Exhibit 23: Juvenile Record Prevalence by Most Serious Crime Charge–
Montgomery County**

<u>Adult Charge</u>	<u>Number with Juvenile Record</u>
Murder	2
Attempted murder	1
Rape	0
Kidnapping	3
Robbery	12
Aggravated assault	3
Other sex crime	0
Burglary	6
Drug trafficking	9
Weapons violation	1
Other serious felony	<u>0</u>
Total	37

**Exhibit 24: Sentence Impact from Juvenile Adjudication Inclusion in Guidelines
Calculation–Montgomery County**

<u>Impact/No Impact</u>	<u>Number of Cases</u>
Increased incarceration	21
No impact	<u>10</u>
Total	31

APPENDIX B: Sentencing Guidelines

Sentencing guidelines were originally developed to ensure that similarly situated offenders received similar sentences.¹ The key to sentencing guidelines is defining the factors that classify individual cases as being similar or dissimilar. Virtually all sentencing guideline systems agree that the primary factors by which sentencing decisions in specific cases should be classified are the nature of the current offense and the offender's criminal record. They differ in the specific manner in which those factors are classified. In overview, however, virtually all states' sentencing guidelines classify crimes into a small number of crime severity categories. There is little unanimity about how to classify criminal history, with some states simply counting the number of prior convictions, other states distinguishing according to the severity of the prior offenses, and yet other states combining both approaches.

The degree of uniformity in sentencing required by the sentencing guidelines also varies. Most sentencing guidelines are legislatively established and are mandatory. A few other sentencing guidelines are judicially established and are voluntary. Mandatory sentencing guidelines permit departures from the presumptive sentence within specified limits by establishing mitigating and aggravating factors (similar to those used in capital sentencing). Both the prosecution and defense may appeal judicial decisions that adopt or reject departure requests based on those factors. Finally, the presumptive sentence under sentencing guidelines may be part of a larger sentencing reform scheme that calls for "truth in sentencing." Under such laws the presumptive sentence is the controlling factor that determines the actual length of incarceration. In states with those laws, parole is abolished and limits are set on the amount of time credits (e.g., good time credits given for nonviolation of prison rules) that an inmate may earn to reduce his or her incarceration time.

Kansas Sentencing Guidelines

The Kansas sentencing guidelines classify crimes in two ways. First, separate sentencing grids are used for drug and non-drug offenses. Second, crime severity is divided into 10 levels for non-drug offenses, excluding first-degree homicide and misdemeanor crimes, both of which are off-grid. Drug

¹ See Arthur Gelman, Jack Kress, and Joseph Calpin, *Sentencing Guidelines: Structuring Judicial Discretion, Volume III: Establishing a Sentencing Guidelines System* (Washington: National Institute of Justice, 1982).

offense severity has only four levels. Criminal history scoring is divided into nine categories that range from (A) three or more person felonies to (I) no record or one misdemeanor conviction.²

Each guideline grid box establishes a presumptive sentence range of months to prison (or probation).³ Thus, under the guidelines, offenders convicted of less serious offenses (levels five to 10) and with less extensive criminal histories are presumed to receive probation sentences (from 6 to 20 months). Those convicted of serious offenses, or with lesser charges but with extensive criminal histories, are presumed to receive incarceration sentences. Three grid locations are “border boxes” for which either a prison or probation term may be set; while incarceration is presumed, treatment program availability or other indicia of offender rehabilitation likelihood outweighs any threat to community safety.

Several special rules provide for presumed incarceration if a firearm is used in the commission of a person felony or the offender commits a new crime while under supervision. The court may also order community treatment in lieu of incarceration if the offense involves the sale of small amounts of marijuana. In calculating a second consecutive sentence under a single charging instrument, the criminal history score used is Category I, the lowest score possible.

The Kansas sentencing guidelines, as amended in 1994, incorporate incapacitation principles. Thus, although proportionality is the applicable sentencing principle for most offenses and criminal history classifications, presumptive sentences now increase dramatically where offenses in severity levels one to five are charged and the offender’s criminal history categories reach categories A (two person felonies) and B (three or more person felonies). For example, an offender convicted of a severity level two offense with a category C criminal history (one person and one nonperson prior conviction) would receive a presumptive sentence of 128 months. But if the criminal history category is B (two person

² The nine history categories are: A (three or more person felonies), B (two person felonies), C (one person and one nonperson felony), D (one person felony), E (three or more nonperson felonies), F (two nonperson felonies), G (one nonperson felony), H (two or more misdemeanors), and I (one misdemeanor or no record). Special scoring rules apply to misdemeanors. Every three convictions or juvenile adjudications for person misdemeanors are counted as a person felony. Lesser nonperson misdemeanors are not counted except for weapons violations. The Kansas law is also relatively unique in counting all convictions on multiple counts of a single indictment as separate convictions (e.g., robbery may also involve illegal use of a weapon; conviction of charges of having committed two crimes in the one incident are counted as two convictions for guideline purposes).

³ Within each grid box, there is a short range of months within which the judge may sentence the defendant. This range is very small for the least serious crimes (two months for a six-month median sentence) and more extensive for boxes at the other end of the grid (19 months for a 16-year median sentence).

felonies), the presumptive sentence rises to 274 months. A category A record (three or more person felonies) increases the presumptive sentence to 292 months (a return to the proportionality principle). In contrast, for all other offenses, the rise in presumptive sentence from an increase in criminal history scores ranges from one to 13 months. Presumptive sentences under the 1993 guideline schema, applicable to cases reviewed by this study, were not as severe; the maximum presumptive sentence was 194 months (range of 204 to 185 months) compared to the present 388 months (range of 408 to 370 months).

Departures under the sentencing guidelines are authorized within a restricted range. Mitigating factors justifying a downward departure include the following: the victim was aggressive; the defendant had a minor or passive role; the defendant had a physical or mental impairment affecting *mens rea*; the degree of harm is less severe than typical for the offense; and physical or mental abuse by the victim against the defendant was a factor in crime causation. Aggravating factors justifying an upward departure include the following: the victim was vulnerable; the defendant used excessive brutality; the defendant was motivated by discrimination; a fiduciary relationship existed between the defendant and the victim; and the offense involved drug trafficking.

The Kansas sentencing guidelines do not cover all offenses. First-degree homicide is not covered by the guidelines; specific legislation relating to capital crimes governs those cases. Misdemeanor offenses are also not covered by the sentencing guidelines. Parole was abolished when the sentencing guidelines were established. Kansas law limits good time credits to no more than 20 percent of the offender's sentence.

Maryland Sentencing Guidelines

The Maryland sentencing guidelines classify crimes into three categories: person crimes, drug offenses, and property crimes. Crime severity for all offenses is divided into seven levels. However, the drug crimes classification uses only five levels and the property offense classification uses six. The criminal history score for person crimes also takes into account victim injury, use of a weapon, and victim vulnerability. Person offenses may receive up to 15 points, 10 of which are derived from the

crime severity scheme. The drug and property classifications do not consider additional points from victim injury, use of a weapon, or victim vulnerability.

Classification of the prior criminal record uses a combination of prior crime severity and the number of prior offenses. Scoring of the prior record is done by assigning points based on that combination; either one, three, or five points are assigned. The criminal history grid calls for most offenders with only one prior conviction to be termed as having minor (one point) or moderate (three points) records. Offenders with two or more convictions for more serious offenses (categories I to III) are designated as having major records and assigned five points. Offenders with numerous minor offenses (seriousness category VII) may have up to four convictions and still be termed as having minor records; those with up to nine minor offenses may be termed as having moderate records. Additional criminal history points are given for a juvenile record, a history of parole or probation violations, and for committing the present offenses while under supervision as a pretrial releasee, probationer, or parolee.

The sentencing grid combining the criminal history and crime severity scores establishes a presumptive sentence range.⁴ The person offense matrix has 15 crime severity distinctions per the point system described above and eight criminal history elements that range from zero points to seven or more points. The drug and property crime matrices use the crime severity levels schema and the same criminal history distinctions. Under this schema, offenders convicted of lesser offenses with no or a minimal criminal history score are presumed to receive probation sentences while all other offenders are sentenced to incarceration.

Sentences under the guidelines are for nonsuspended time only. A judge is free to order additional incarceration above the guidelines where that time is suspended pursuant to a parole or probation term. The Maryland sentencing guidelines are voluntary only; failure of the sentencing judge to follow the recommendations is not subject to appeal.

The Maryland presumptive sentences, like those in Kansas, reflect legislative adoption of incapacitation-directed laws. The Maryland laws differ significantly from the Kansas approach in

⁴ Within each grid box there is a range within which the presumptive sentence is established. For minor offenses and lesser criminal history scores, the range is short (three to 12 months). For more serious offenses, the range is relatively extensive (e.g., 15 to 25 years for a crime severity score of 12 with no criminal history).

several important ways. The most important of these is the guidelines' adherence to proportionality principles. Each increase in criminal history score results in a modest (two to three years) increase in the presumptive sentence. However, application of this principle across seven criminal history scores results in a total increase of up to 42 years for serious offenses from the presumptive sentence assigned to an offender with no criminal record. A second important difference is that Maryland law retains an element of indeterminacy while Kansas law calls for determinate, fixed sentences. Thus, all sentences under Maryland law call for imposition of both a minimum and maximum sentence. The state parole board determines the actual sentence to be served within those parameters.